IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5188 OF 2005

Sayed Siraj Azar Abdul Hashim ..Applicant

Vs.

Mrs.Sana Yusuf & Baugwala & Ors. ..Respondents

...

Ms. Anjali Iyer Advocate for Applicant
Mr. Mangesh Sirsat for Respondent no.1
Mr. M.S.Mhambray A.P.P. for the State

...

**CORAM: SMT.V.K.TAHILRAMANI,J.**

**DATE : AUGUST 22,2005**

**P.C.**

1. Heard the learned advocate for the applicant, the learned advocate for the respondent no.1 complainant and the learned A.P.P. for the State.

2. The applicant is seeking quashing of C.C. No. 653/S/2002 which is pending before the Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai. In the

said case, the process has been issued against the applicant under Section 500 of IPC. The learned advocate for the applicant submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. If the process issued against the applicant is set aside, the proceedings in respect of the applicant, would come to an end.

3. For the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicant prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicant to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the applicant makes a statement that the necessary

revision will be preferred within four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks. The learned advocate for the respondent no.1-complainant fairly states that no objection will be raised in respect of delay in filing of revision.

5. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

6. The learned advocate for the respondent-original complainant has stated that the applicant has not attended the trial Court at any point of time. This has been disputed by the learned advocate for the applicant, however, she undertakes that if the applicant is granted exemption on 25.8.2005, the applicant will present himself before the trial Court within a period of four weeks from today. She further submitted that the respondent-original complainant will be

informed in advance of the date on which the applicant will present himself before the trial Court. The said statement is accepted. In view of the above statement, it is made clear that on 25.8.2005 the applicant is exempted from personal appearance before the trial Court subject to the condition that he will present himself before the trial Court within four weeks from today.

7. Application is disposed of.

[V.K.TAHILRAMANI,J.]